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11 Attorneys for Plaintiff
12 FRANCES CARLO

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 FRANCES CARLO,

16 Plaintiff,

17 v.

18 AMERICAN UNITED LIFE
19 INSURANCE COMPANY,
20

21 Defendant
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) CASE NO.:

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) **COMPLAINT FOR BREACH OF**
) **CONTRACT AND BREACH OF THE**
) **IMPLIED COVENANT OF GOOD**
) **FAITH AND FAIR DEALING**

)

) **DEMAND FOR JURY TRIAL**

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1 Plaintiff Frances Carlo brings this action against Defendant American United
2 Life Insurance Company (“AUL”) as follows:

3 INTRODUCTION

4 1. Insurance Code sections 10113.71 and 10113.72 (“the Statutes”) require
5 insurers issuing life insurance policies in California to: (1) provide a grace period of at
6 least 60 days for nonpayment of premium; (2) mail a notice of “pending lapse and
7 termination” for any nonpayment of premium within 30 days of the premium due date
8 and at least 30 days prior to the termination date; and (3) give the applicant the right to
9 designate an additional person for receiving the notice and notify the policy owner of
10 that right annually. The Statutes became effective January 1, 2013 and their
11 requirements apply regardless of whether a policy was originally issued prior to that
12 date. *McHugh v. Protective Life Insurance Company* (2021) 12 Cal.5th 213.

13 2. Plaintiff was a beneficiary under a life insurance policy issued in March
14 of 2014 on the life of her domestic partner, Ronald Cones. Plaintiff dutifully paid
15 premiums under that policy for years but missed (and later made up) payments in mid-
16 2021 after moving to a new address. Despite the Statutes’ clear mandate, AUL failed
17 to observe a 60-day grace period, failed to provide the requisite notice of termination,
18 failed to provide the applicant the right to designate a person for receiving notice of
19 termination, and illegally terminated the policy before Mr. Cones unexpectedly died in
20 October of 2021. AUL also failed to send the appropriate notices to Plaintiff’s new
21 address. When Plaintiff made claim for the death benefits due, AUL simply ignored
22 its obligations under the Statutes and denied the claim on the basis the policy had been
23 terminated for nonpayment.

24 JURISDICTION AND VENUE

25 3. This Court has original jurisdiction of this case based on diversity of
26 citizenship. Plaintiff is a citizen of the State of California, AUL is incorporated in and
27 has its principal place of business in the State of Indiana, and the amount in
28 controversy between Plaintiff and AUL is in excess of \$75,000.00. 28 U.S.C. § 1332.

1 4. The Court has personal jurisdiction over the AUL because it has
2 conducted business in California by insuring various persons in California and
3 administering claims for life insurance benefits due beneficiaries in California, as
4 alleged herein.

5 5. Plaintiff's claims arise out of a life insurance benefit denied in Placer
6 County, California by AUL making venue proper in this District.

7 **THE PARTIES**

8 6. Plaintiff Frances Carlo is an individual who, at relevant times, has
9 resided in Placer County, California.

10 7. AUL is an insurance company licensed to do business in California and,
11 at all relevant times, has been domiciled in Indiana.

12 **SUBSTANTIVE ALLEGATIONS**

13 8. In 2012, Assembly Bill 1747 was enacted and created the Statutes.
14 They became effective January 1, 2013.

15 9. Insurance Code section 10113.71 provides in pertinent part:

16 (a) Each life insurance policy issued or delivered in this state shall
17 contain a provision for a grace period of not less than 60 days from the
18 premium due date. The 60-day grace period shall not run concurrently
19 with the period of paid coverage. The provision shall provide that the
policy shall remain in force during the grace period.

20 (b)(1) A notice of pending lapse and termination of a life insurance
21 policy shall not be effective unless mailed by the insurer to the named
22 policy owner, a designee named pursuant to Section 10113.72 for an
23 individual life insurance policy, and a known assignee or other person
24 having an interest in the individual life insurance policy, at least 30
days prior to the effective date of termination if termination is for
25 nonpayment of premium.

26 10. Insurance Code section 10113.72 provides:

27 (a) An individual life insurance policy shall not be issued or delivered
28 in this state until the applicant has been given the right to designate at

1 least one person, in addition to the applicant, to receive notice of lapse
2 or termination of a policy for nonpayment of premium. The insurer
3 shall provide each applicant with a form to make the designation. That
4 form shall provide the opportunity for the applicant to submit the name,
5 address, and telephone number of at least one person, in addition to the
6 applicant, who is to receive notice of lapse or termination of the policy
7 for nonpayment of premium.

8 (b) The insurer shall notify the policy owner annually of the right to
9 change the written designation or designate one or more persons. The
10 policy owner may change the designation more often if he or she
11 chooses to do so.

12 (c) No individual life insurance policy shall lapse or be terminated for
13 nonpayment of premium unless the insurer, at least 30 days prior to the
14 effective date of the lapse or termination, gives notice to the policy
15 owner and to the person or persons designated pursuant to subdivision
16 (a), at the address provided by the policy owner for purposes of
17 receiving notice of lapse or termination. Notice shall be given by first-
18 class United States mail within 30 days after a premium is due and
19 unpaid.

20 11. In enacting the Statutes, the Legislature intended to address the problem
21 of long-time policy owners—often seniors and/or those with health conditions—
22 losing life insurance policies “they had spent years paying for.”

23 Moreover, the legislative history provides several indications that the
24 Legislature enacted the grace period and notice protections in part to
25 protect *existing* policy owners from losing the important life insurance
26 coverage they had spent years paying for. The Assembly and Senate
27 materials on Assembly Bill No. 1747 (2011–2012 Reg. Sess.) include
28 purpose and supporting argument statements like the following:
“According to the author, the bill provides consumer safeguards from
which *people who have purchased life insurance coverage, especially
seniors, would benefit*. Under existing law, individuals can easily lose
the critical protection of life insurance if a single premium is
accidentally missed (even if they have been paying premiums on time
for many years).

McHugh v. Protective Life Insurance Company, supra, 12 Cal.5th at 240-241.

1 12. Consistent with this purpose, the Statutes “appear to create a single,
2 unified pretermination notice scheme” that includes three components: (1) policy
3 owners (and applicants if not the owner) have the right to designate additional people
4 to receive a notice of termination; (2) policy owners must receive a notice of pending
5 lapse and termination within 30 days of a missed premium payment and at least 30
6 days prior to termination; and (3) each policy has a 60-day grace period. *McHugh v.*
7 *Protective Life Insurance Company, supra*, 12 Cal.5th at 240.

8 13. “An insurer's failure to comply with these statutory requirements means
9 that the policy cannot lapse.” *Thomas v. State Farm Life Insurance Company* (9th
10 Cir., Oct. 6, 2021, No. 20-55231) 2021 WL 4596286, at *1, *citing McHugh v.*
11 *Protective Life Insurance Company, supra*.

12 14. Effective March 28, 2014, AUL issued a “Level Term Life Policy with
13 Increasing Premium” on the life of Ronald Cones, policy number 0620680170 (“the
14 Policy”). Plaintiff was the named owner and beneficiary under the Policy. Prior to
15 issuance, AUL did not give Ronald Cones or Plaintiff the right to designate an
16 additional person for purposes of receiving notice of termination for nonpayment of
17 premium.

18 15. The Policy states that AUL will pay a death benefit to Plaintiff in the
19 event Ronald Cones dies while the Policy is in force, including during the grace
20 period.

21 The Death Benefit Proceeds are the Death Benefit in force of the date
22 of death. If the Insured dies during the grace period, the proceeds paid
23 will be equal to the Death Benefit immediately prior to the start of the
24 grace period less any due and unpaid premiums as of the date of death.

25 16. The amount of the Death Benefit under the Policy is \$800,000.

26 17. The Policy has a Termination provision that states the Policy will
27 terminate “at the end of the grace period if the premium due is not paid.” The Grace
28 Period provision, in turn, states:

1 Grace Period - The grace period begins on the due date of an unpaid
2 premium. The length of the grace period is thirty-one days. The policy
3 will continue in force during the grace period. If the insured dies during
4 the grace period, the premium due will be paid from the policy
5 proceeds. If the premium due is not paid within the grace period, all
6 insurance stops and the policy terminates without value.

7 18. Plaintiff paid monthly premiums under the Policy.

8 19. On January 26, 2021, AUL sent Plaintiff a Payment Notice stating that
9 premiums were paid to January 28, 2021 and that the amount of \$449.11 was due
10 January 28, 2021. Form language on the reverse side of the document states under
11 “Conditions of Notice”:

12 If this is a fixed premium policy, unless each premium shown on this
13 notice is paid on or before its due date (or before the expiration of a
14 grace period of thirty-one days thereafter), the policy and all payments
15 thereon will become forfeited and void, except as otherwise may be
16 provided in the policy.

17 20. On February 8, 2021, AUL sent Plaintiff a Premium Reminder Notice
18 stating that \$449.11 was due January 28, 2021. The AUL Premium Reminder Notice
19 form contains the same language on the reverse side of the document as does the
20 Payment Notice.

21 21. In February of 2021, Plaintiff and Ronald Cones moved from a
22 Rocklin, California address to a Lincoln, California address. Plaintiff a filed change of
23 address form with the United States Post Office and various companies she would
24 receive monthly bills from. Plaintiff paid her monthly bills through her bank’s
25 automated bill paying system where Plaintiff could elect to pay a given monthly bill.

26 22. On March 1, 2021, AUL sent Plaintiff a Special Reinstatement Offer to
27 her Rocklin, California address stating that it had no record of receiving the January
28 28, 2021 payment within the grace period and that, unless the “Conditions of Offer”
appearing on the reverse side of the document were accepted by April 3, 2021, the

1 offer would expire. The conditions language appearing on the reverse side of the
2 document states:

3 This is a special offer to accept payment of the past due premium
4 without interest and to reinstate the policy if lapsed, subject to the
following conditions:

- 5 1. Payment must be made while the insured is still living.
- 6 2. Payment must be made on or before the date this offer expires.
- 7 3. The Company does not waive any contractual right to require
8 satisfactory evidence of insurability before reinstating the policy if
9 payment is made after the offer expires.
- 10 4. Until payment is made under this offer, the offer does not change the
status of the policy as determined by its terms. The grace period
provided in the policy is not extended.
- 11 5. This offer applies only to this premium.

12 23. On March 2, 2021, AUL received a \$449.11 premium from Plaintiff.

13 24. On March 2, 2021, AUL sent a Payment Notice to Plaintiff's Rocklin,
14 California address stating that premiums were paid to February 28, 2021 and the
15 amount of \$449.11 was due February 28, 2021.

16 25. On March 10, 2021, AUL purportedly sent Plaintiff a Premium
17 Reminder Notice to her Lincoln, California address stating the amount due February
18 28, 2021 was \$449.11. Plaintiff has no record of receiving this notice or any of the
19 subsequent notices or offers referenced below. When AUL denied Plaintiff's claim on
20 February 16, 2021, it provided Plaintiff copies of the notices and offers from AUL
21 showing a Lincoln, California address identified below.

22 26. A March 30, 2021 AUL Special Reinstatement Offer states that AUL
23 has no record of receiving the February 28, 2021 payment within the grace period
24 and that unless the "Conditions of Offer," quoted above, are accepted by May 4,
25 2021, the offer will expire.

26 27. On April 12, 2021, AUL received a \$449.11 premium from Plaintiff.

27 28. An April 12, 2021 AUL Payment Notice states that premiums were
28 paid to March 28, 2021 and the amount of \$449.11 was due March 28, 2021.

1 29. On June 1, 2021, AUL received a \$449.11 premium from Plaintiff.

2 30. On June 28, 2021, AUL received a \$449.11 premium from Plaintiff.

3 31. A June 28, 2021 AUL Payment Notice states that premiums were paid
4 to May 28, 2021 and the amount of \$449.11 was due May 28, 2021. Like the prior
5 Payment Notices, it contains form language on the reverse side stating that if the
6 premium is not paid by its due date or before the end of the 31-day grace period, the
7 policy “will become forfeited.”

8 32. An August, 2, 2021, AUL Important Insurance Notice of Policy Lapse
9 states that the Policy has lapsed and is “no longer providing any insurance
10 protection.”

11 33. Following Plaintiff’s hospitalization in July of 2021, AUL received two
12 payments of \$449.11 from Plaintiff, one on August 6, 2021 and the other on August
13 30, 2021.

14 34. On October 7, 2021, AUL wrote a letter to Plaintiff at her Lincoln,
15 California address returning the \$898.22 in payments made by Plaintiff and stating
16 that Ronald Cones would need to apply for reinstatement. AUL further advised
17 Plaintiff not to send any further premiums until a decision on reinstatement was made.

18 35. Ronald Cones died unexpectedly on October 15, 2021.

19 36. Plaintiff made claim under the Policy for the \$800,000 death benefit.

20 37. On February 16, 2022, AUL wrote a letter to Plaintiff denying her
21 claim. In the letter, AUL recited the chronology of the notices, offers, and payments
22 listed above that did not identify any Payment Notice or Premium Reminder Notice
23 sent Plaintiff in May of 2021 or any Premium Reminder Notice or Special
24 Reinstatement Offer sent to Plaintiff after the June 28, 2021 Premium Notice. The
25 letter states that the August 2, 2021 Important Insurance Notice of Policy Lapse “was
26 mailed 55 days after the policy premium notice” which would have been June 8,
27 2021. The letter further represents that the “premium payments would have had to be
28 received monthly for the policy to have remained active” while ignoring the Statutes’

1 requirements and AUL's violations of them, including its use of an illegal grace
2 period.

3 **FIRST CLAIM FOR RELIEF**
4 **BREACH OF CONTRACT**

5 38. Plaintiff hereby repeats and re-alleges each and every allegation set
6 forth in all of the foregoing paragraphs as if fully set forth herein.

7 39. As alleged herein, AUL issued the Policy on the life of Ronald Cones
8 under which Plaintiff was the named owner and beneficiary. Under the Policy, AUL
9 agreed to pay a \$800,000 death benefit to Plaintiff in the event of Ronald Cones' death
10 subject to the payment of premiums on their due dates and the continuation of
11 coverage during the grace period.

12 40. The Statutes are read into the Policy and become part of it as a matter of
13 law. The provisions of the Statutes control over any conflicting language in the Policy.

14 41. The Policy contains a grace period provision, quoted above, that
15 violates the Statutes because it provides a grace period of 31 days instead of the 60
16 days mandated by Insurance Code section 10113.71(a). Accordingly, AUL's use of,
17 and reference to, a 31-day grace period in issuing and terminating the Policy for
18 nonpayment of premium breached the terms of the Policy as imposed by the Statutes.

19 42. AUL also violated the Statutes by failing to give notice of pending
20 lapse and termination 30 days prior to terminating the Policy. As alleged herein, AUL
21 did not give notice that the Policy would lapse or terminate. Instead, according to
22 AUL, on August, 2, 2021 it sent Plaintiff an Important Insurance Notice of Policy
23 Lapse stating that the Policy *had lapsed* and was "no longer providing any insurance
24 protection." Assuming this notice was sent to Plaintiff, it does not constitute a 30-day
25 notice of pending lapse and termination required by the Statutes.

26 43. AUL's June 28, 2021 Payment Notice stating that premiums were paid
27 to May 28, 2021 and the amount of \$449.11 was due May 28, 2021 also was not sent
28 to Plaintiff, and assuming it was, it is not a 30-day notice of pending lapse and

1 termination required by the Statutes. It was not labeled as a notice of lapse or
2 termination and contained no language stating that the Policy would lapse or
3 terminate 30 days from the date of the notice. The form language on the reverse side
4 of the document—stating that the policy “will become forfeited” if the premium is not
5 paid by its due date or before the end of the 31-day grace period—does not provide
6 the requisite notice. Among other reasons, it fails to identify a proper termination date
7 that includes a 60-day grace period, ambiguously identifies a “forfeit” date as the
8 premium due date *or* the end of the grace period, implicates dates that have passed
9 (May 28 and 31 days later, June 28), and relies on an illegal 31-day grace period. It
10 also was not sent “within 30 days after a premium is due and unpaid” as required by
11 Insurance Code section 10113.71(b)(3).

12 44. As alleged herein, AUL did not reference in its February 16, 2021
13 denial letter any Premium Reminder Notice or Special Reinstatement Offer sent
14 Plaintiff following the June 28, 2021 Payment Notice. AUL also did not provide
15 copies of any such documents when it purported to provide Plaintiff with the
16 documents sent to her Lincoln, California address. But even assuming such
17 documents were sent to Plaintiff prior to the AUL’s termination of the Policy on
18 August 2, 2021, neither constituted the 30-day notice of pending lapse and
19 termination required by the Statutes. Any Premium Reminder Notice was required to
20 have been mailed by June 27, 2021 and there is no indication that AUL did so given
21 its June 28, 2021 Payment Notice. Additionally, like the Payment Notice referenced
22 above, the Premium Reminder Notice is not labeled as a notice of lapse or termination
23 and contains no language stating that the Policy would lapse or terminate 30 days
24 from the date of the notice. It also contains the same defective language on the reverse
25 side of the document as does the Payment Notice. Any Special Reinstatement Offer
26 form that was sent would have been defective for similar reasons plus the fact that it
27 ignores the 60-day grace period imposed by the Statutes by making acceptance of the
28 offer conditioned on the insured being alive and states “the grace period provided in
the policy is not extended.”

1 45. AUL also violated the Statutes by failing to provide Plaintiff with the
2 opportunity to designate an additional person to receive notice of lapse or termination
3 of the Policy for nonpayment of premium and/or did not provide her annual notice of
4 the right to make or change such a designation, as alleged herein.

5 46. AUL's violations of the Statutes meant that the Policy could not be
6 terminated for nonpayment of premium and AUL's refusal to pay the Plaintiff the
7 \$800,000 death benefit breached the terms of the Policy and the obligations
8 superimposed on the Policy's terms by California law.

9 47. AUL also breached the terms of the Policy under California law by
10 failing to send the Payment Notices to Plaintiff's Lincoln, California address and/or
11 failing to send any Premium Reminder Notice and Special Reinstatement Offer to her
12 Lincoln, California address before sending her the August 2, 2021 Important
13 Insurance Notice of Policy Lapse stating that the Policy had lapsed and was "no
14 longer providing any insurance protection." Said acts also caused AUL to waive or be
15 estopped from asserting nonpayment of premium as a basis for denying liability.

16 48. As a proximate result of this breach of the contract, Plaintiff has been
17 deprived of policy benefits, and interest thereon, all to her damage in a sum to be
18 proven at the time of trial.

19 **SECOND CLAIM FOR RELIEF**
20 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
21 **AND FAIR DEALING**

22 49. Plaintiff hereby repeats and realleges the preceding paragraphs and
23 incorporates the same as though fully set forth herein.

24 50. Plaintiff was the named owner and beneficiary under the Policy.

25 51. The relationship of insurer and owner/beneficiary as between AUL and
26 Plaintiff has caused there to be an implied-in-law duty extending from AUL to
27 Plaintiff to deal fairly with Plaintiff and in good faith in fulfilling the promises made
28 under the contract.

1 52. AUL has breached the duty of good faith and fair dealing owed
2 Plaintiff by the committing the following acts in denying Plaintiff's claim for the
3 Death Benefit under the Policy:

4 a) Failing to properly and thoroughly investigate Plaintiff's claim;

5 b) Issuing the Policy with an illegal 31-day grace period and then
6 referencing and relying on that time period in the notices sent Plaintiff regarding
7 premiums due under the Policy, the status of the Policy, and termination of the Policy
8 for nonpayment of premium;

9 c) Ignoring California law as set forth in the Statutes when providing
10 notice of the premiums due, notice required for terminating a policy for nonpayment
11 of premium, the right to designate another person to receive notice, and in terminating
12 the Policy without the requisite notices;

13 d) Ignoring the California Supreme Court's decision in *McHugh v.*
14 *Protective Life Insurance Company, supra*, when denying Plaintiff's claim;

15 e) Misrepresenting facts and Policy provisions to Plaintiff when denying
16 Plaintiff's claim by representing that an illegal 31-day grace period was the applicable
17 grace period for the Policy, asserting that the Policy could be terminated without the
18 notice required by the Statutes, concealing the applicability of the Statutes to the
19 Policy, concealing that it failed to provide the applicant the right to designate another
20 person to receive notice, concealing that it failed to send the Payment Notices to
21 Plaintiff's Lincoln, California address and/or failed to send any Premium Reminder
22 Notice and Special Reinstatement Offer to her Lincoln, California address before
23 terminating the Policy on August 2, 2021, and representing that it had mailed Plaintiff
24 a Premium Notice 55 days prior to the alleged August 2, 2021 lapse when the last
25 Premium Notice identified in the letter was the June 28, 2021 Premium Notice which,
26 in any event, was insufficient to comply with AUL's notice obligations under the
27 Statutes, as alleged above;

28 f) Intentionally and willfully violating Insurance Code sections 10113.71

1 and 10113.72;

2 g) Engaging in a pattern and practice of terminating policies in violation
3 of the Statutes and refusing to pay death benefits due under those policies on the basis
4 the policies terminated for nonpayment of premium. In terminating policies in this
5 fashion AUL has benefited financially by keeping the premiums it has collected on
6 policies for years while eliminating its approaching or realized obligation to pay death
7 benefits.

8 h) Denying Plaintiff's claim when it knew it had waived or was estopped
9 from asserting nonpayment of premium as a basis for denying liability, as alleged
10 herein;

11 i) Other acts that Plaintiff is currently unaware of.

12 53. As a proximate result of said acts, Plaintiff has suffered loss of benefits
13 under the Policy, great physical and mental stress, pain, and shock to her nervous
14 system, great emotional distress, humiliation and anxiety, and economic loss, all to
15 her damage in a sum to be proven at the time of trial.

16 54. As a further proximate result of said acts, Plaintiff will incur attorney
17 fees in proving the amounts due under the Policy.

18 55. AUL's conduct, described herein, was intended to cause injury to
19 Plaintiff or was conduct carried out by AUL with a willful and conscious disregard of
20 the rights of Plaintiff, subjected the Plaintiff to cruel and unjust hardship in conscious
21 disregard to her rights, and was an intentional misrepresentation, deceit, or
22 concealment of a material fact known to AUL with the intention to deprive Plaintiff
23 of property, legal rights, or to otherwise cause injury, such as to constitute malice
24 oppression or fraud under California Civil Code section 3294, thereby entitling
25 Plaintiff to punitive damages in an amount appropriate to punish or set an example of
26 AUL. Said acts were authorized, performed, and ratified by officers and managing
27 agents of AUL as they were part of an ongoing corporate practice by AUL, consented
28 to and authorized by management employees and officers of AUL.

1 **Wherefore, Plaintiff prays for judgment against AUL as follows:**

2 1. Policy benefits and interest in an amount to be proven at the time of trial;

3 2. Special and consequential damages, including attorney fees incurred in
4 proving the policy benefits due, in an amount to be proven at the time of trial;

5 3. Punitive damages in an amount sufficient to make an example of AUL;

6 4. Costs of suit incurred herein; and

7 5. For such other and further relief as the Court deems just and proper.

8
9 DATED: October 28, 2022

GIANELLI & MORRIS

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By: /s/ Robert S. Gianelli

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ROBERT S. GIANELLI

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JOSHUA S. DAVIS

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ADRIAN J. BARRIO

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DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a trial by jury on all issues triable to a jury.

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DATED: October 28, 2022

GIANELLI & MORRIS

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By: /s/ Robert S. Gianelli

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ROBERT S. GIANELLI

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JOSHUA S. DAVIS

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Attorneys for Plaintiff

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